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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RHEA RICHARDSON,

Plaintiff,

vs.

SOUTHERN NEVADA REGIONAL
HOUSING AUTHORITY and
JOHN HILL in his capacity as Executive
Director of the SOUTHERN NEVADA
REGIONAL HOUSING AUTHORITY

Defendants.

CASE NO. 2:15-cv-02012-RFB-GWF

**PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

COMES NOW, Plaintiff RHEA RICHARDSON ("Richardson"), by and through her attorney, Ron Sung, Esq., of Nevada Legal Services, Inc., and moves this court pursuant to Fed. R. Civ. P. 65(b) for a preliminary injunction requiring Defendants Southern Nevada Regional Housing Authority and John Hill to reinstate Richardson's Section 8 Housing Choice Voucher subsidy so that she can continue to receive public housing rental subsidies. This motion is based on Fed. R. Civ. Pro. 65, etc., and the concurrently filed points and authorities

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **PARTIES**

3 Richardson was a recipient of a Section 8 Public Housing Choice Voucher through the
4 SNRHA. Defendant SNRHA is a municipal corporation created and existing under Chapter 315
5 of the Nevada Revised Statutes. The SNRHA is a Public Housing Agency within the meaning
6 of 42 U.S.C. § 1437 and administers federally subsidized housing, including the Section 8
7 Public Housing program, as authorized by the United States Housing Act. Defendant, JOHN
8 HILL, is the Executive Director of the SNRHA and has ultimate responsibility for
9 administering the SNRHA's policies, including those related to its housing choice voucher
10 programs.

11
12 **REGULATORY BACKGROUND**

13 Richardson was a participant of SNRHA's Section 8 Housing Choice Voucher
14 ("Voucher") program and received housing subsidies from the U.S. Department of Housing and
15 Urban Development ("HUD") under the U.S. Housing Act of 1937, 42 U.S.C. §1437f, and
16 governed by regulations contained in 24 C.F.R. Part 982. HUD requires SNRHA to inspect a
17 leased unit under the Voucher program before SNRHA enters into a contract with the landlord.
18 At least annually, SNRHA must confirm the unit complies with HUD's Housing Quality
19 Standards ("HQS").¹ HUD also sets the standards that SNRHA must follow in terms of setting
20 the rent subsidy, the lease contents, and reasons to terminate the Voucher subsidy.² SNRHA

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¹ 24 C.F.R. 982.401-406.

24 ² *Id.*

1 will terminate participants of the Voucher program who fail to comply with the HQS
2 inspections.³

4 FACTUAL ALLEGATIONS

5 Richardson was a recipient of a Voucher administered by the SNRHA. Richardson
6 commenced her subsidized tenancy at 6540 Angel Mountain Avenue, Las Vegas, Nevada
7 (“assisted unit”) in 2011.

8 SNRHA scheduled an HQS annual inspection of the assisted unit on August 11, 2015,
9 between 8:15 a.m. and 11:30 a.m. Richardson received notice of the inspection and was present
10 at the assisted unit during that date and time, but SNRHA’s inspector did not show up. At 12:02
11 p.m. Richardson left a message to SNRHA’s inspections department asking why the inspector
12 did not show up. At 2:02 p.m., SNRHA called Plaintiff back stating the inspector was not
13 answering his cell phone and the need to reschedule the inspection. Richardson believes that
14 SNRHA’s inspector showed up to the assisted unit sometime in the afternoon of August 11,
15 2015, but the inspector did not knock on the door or ring the doorbell; instead, the inspector
16 placed a “Sorry I Missed You” door hanger.

17 SNRHA scheduled a second HQS annual inspection of the assisted unit on August 19,
18 2015. Plaintiff never received any notice, and as a result, Plaintiff missed the August 19, 2015,
19 second inspection.

20 SNRHA sent a Notice of Termination to Richardson on August 25, 2015, stating that
21 SNRHA will terminate Richardson’s Voucher on “[sic] September 31, 2015,” due to
22 Richardson’s failure to comply with HQS inspections. The U.S. Postal Service returned the
23

24 ³ 24 C.F.R. 982.404.

1 termination notice to SNRHA as “unclaimed” and “unable to forward.”⁴ As a result, Richardson
2 did not know SNRHA terminated her Voucher.

3 According to the U.S. Postal Service website for tracking certified mail, the U.S. Postal
4 Service never actually attempted to deliver the certified letter to the assisted unit; instead, the
5 letter remained at the post office for nearly a month before returning to SNRHA on September
6 22, 2015.⁵

7 SNRHA ceased rental subsidies to Richardson’s landlord on September 30, 2015. On or
8 about October 2, 2015, Richardson discovered that SNRHA did not subsidize her October rent,
9 so Richardson contacted SNRHA. SNRHA informed Richardson about the termination notice.
10 On October 5, 2015, Richardson appealed the termination decision with SNRHA on the basis
11 that she did not receive her termination notice.⁶ On October 12, 2015, SNRHA denied
12 Richardson’s request for a hearing because Richardson failed to appeal the termination decision
13 within 10 days of SNRHA issuing the termination decision.⁷

14 Without the Voucher, Richardson would not be able to afford a place to live. She is a
15 single mother and sole caretaker of a minor child. Her only source of income is working for a
16 staffing company working temporary jobs. On October 6, 2015, the landlord of her assisted unit
17 served her with a 5-day eviction notice. The landlord could file a complaint for summary
18 eviction any day.

20 ARGUMENT

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22

⁴ See Exhibit A.

23 ⁵ See Exhibit B.

24 ⁶ See Exhibit C.

⁷ See Exhibit D.

Richardson requires a preliminary injunction to force SNRHA to continue its subsidy payments to Richardson's landlord because without such relief, she will suffer the irreparable harm of homelessness. Richardson is likely to succeed on the merits of her claims. To succeed in her motion, Richardson must establish that: (1) she is "likely to succeed on the merits" and (2) will likely suffer irreparable harm without the restraining order; (3) "the balance of equities" tip in Richardson's favor; and (4) "an injunction is in the public interest."⁸ In addition, Richardson seeks a mandatory injunction because SNRHA has already terminated her Voucher subsidy. The mandatory nature of the injunction requires this Court to deny the preliminary injunctive unless the facts and law clearly favor Richardson.⁹

A. *Richardson is likely to succeed on the merits because she did not receive any notice of her termination.*

Richardson is likely to succeed on the merits because a fundamental notion of due process requires notice before termination of any federal benefit like the Voucher and the facts and law clearly favor Richardson. In *Goldberg v. Kelly*, the Supreme Court held that recipients of public benefits facing termination are entitled to due process of law of "timely and adequate notice detailing the reasons for a proposed termination."¹⁰ Courts have later applied this requirement to terminations of Vouchers.¹¹

Although mail is usually an efficient method of providing constitutionally adequate notice under the Fourteenth Amendment, SNRHA cannot solely rely on mail if "continued exclusive reliance on an ineffective means of service is not notice 'reasonably calculated to

⁸ *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365 (2008).

⁹ *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1320 (9th Cir. 1994).

¹⁰ *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970).

¹¹ *Edgecomb v. Hous. Auth. of Vernon*, 824 F. Supp. 312, 314 (D. Conn. 1993).

1 reach those who could easily be informed by other means at hand.”¹² Courts prefer certified
 2 mail, but the sole reliance on certified mailing is similarly insufficient.¹³ Therefore, Courts have
 3 followed a simple rule for service via mail prior to taking a property interest such as public
 4 housing benefits: (1) send certified mail and (2) use alternate service if certified mail returns
 5 undelivered.

6 In this case, Richardson did not receive notice of her termination from the Voucher
 7 program. As evidenced by the returned certified letter, the U.S. Postal Service returned
 8 SNRHA’s attempt to serve Richard with the Notice of Termination.¹⁴ As far as Richardson is
 9 aware, SNRHA did not attempt any alternate service. Despite actual knowledge that Richardson
 10 did not receive the Notice of Termination on September 22, 2015, when the U.S. Postal Service
 11 returned the certified letter to SNRHA, SNRHA still continued with the termination of
 12 Richardson’s Voucher on September 30, 2015. Even more egregious was SNRHA’s refusal to
 13 hear any appeal by Richardson on the basis that she failed to appeal the Notice of Termination
 14 within 10 days of August 25, 2015, when SNRHA knew Richardson did not receive the Notice
 15 of Termination. Therefore, SNRHA violated Richardson’s due process by terminating her
 16 Voucher without notice and refusing her appeal without justification.

17
 18 B. *Richardson will suffer the irreparable injury of homelessness if her subsidized housing*
 19 *is terminated.*

20
 21 ¹² *Greene v. Lindsey*, 456 U.S. 444, 455-56 (1982) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)).

22 ¹³ *Jones v. Flowers*, 547 U.S. 220, 238 (2006) (if the certified letter returns as unclaimed or
 23 undelivered, “there was more that reasonably could be done” prior to taking a property interest);
Lucky Dogs LLC v. City of Santa Rosa, 913 F. Supp. 2d 853, 858-59 (N. Cal 2012) (state’s
 failure to provide a return receipt of the hearing notice for an administrative fine was a
 “constitutional deprivation” of due process rights).

24 ¹⁴ See Exhibit A.

1 The type of harm Richardson will suffer without a preliminary injunction—termination
 2 of her housing subsidy, eviction and likely homelessness—is precisely the type of harm that
 3 courts in this Circuit have deemed irreparable. The standard for irreparable harm is actual,
 4 imminent harm that cannot be adequately compensated by money damages after a final
 5 judgment on the merits.¹⁵ It is well-established that the loss of an interest in real property
 6 constitutes an irreparable injury.¹⁶ This is particularly true when the property interest threatened
 7 is a federal housing subsidy for a tenant who is too poor to afford market rent without the
 8 subsidy. In *Park Village*, the 9th Circuit affirmed a decision by the District Court enjoining a
 9 landlord from refusing to honor federally subsidized vouchers from the Voucher program.¹⁷ The
 10 9th Circuit found the tenants faced eviction because they could not afford the market rent they
 11 would be charged without the voucher. Calling the hardship that would befall elderly, low-
 12 income tenants facing eviction “self-evident,” the court affirmed that the risk of eviction for
 13 such tenants was an irreparable harm.¹⁸

14 Here, Richardson’s sole source of income comes from temporary work that she started
 15 earlier this month through a staffing agency. HUD calculates that fair market rent for a one-
 16 bedroom apartment in the Las Vegas metropolitan area is \$843.00 per month, which is more
 17 than Richardson can afford.¹⁹ Without the Voucher, Richardson would not be able to pay
 18 market rent at another unit and continue to provide for her family’s basic needs. It will be close
 19 to impossible to afford to live anywhere on her monthly income should SNRHA terminate her

20 ¹⁵ *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002).

21 ¹⁶ *Park Village. Apts. Tenants Ass’n v. Mortimer Howard Trust*, 636 F.3d 1150, 1159 (9th Cir.
 22 2011); *See also Mitchell v. HUD*, 569 F. Supp. 701, 704-05 (N.D. Cal. 1983) (holding that
 potential eviction of a Section 8 tenant constituted sufficient possibility of irreparable injury);
McNeill v. New York City SNRHA, 719 F. Supp. 233, 254 (S.D.N.Y. 1989).

23 ¹⁷ *Park Village Apts. Tenants Ass’n*, 636 F.3d at 1160.

24 ¹⁸ *Id.*

¹⁹ 78 Fed. Reg. 61, 668-78 (October 3, 2013) (Schedule B, Page 31).

1 Voucher. In fact, since the termination of her Voucher, Richardson's landlord has served her
2 with an eviction notice for failure to pay October rent, and she is at risk of eviction because she
3 cannot afford the rent.

4 Because Richardson will not be able to pay her rent unless she receives the Voucher
5 subsidy and faces an imminent risk of eviction and homelessness, she and her minor son will
6 suffer irreparable harm without the injunction.

7
8 C. *The balance of equities tip in Richardson's favor.*

9 SNRHA will suffer some hardship in having to assign a Voucher subsidy to Banks. Yet,
10 the use of one Voucher subsidy will not prevent SNRHA from fulfilling its overall mission.²⁰
11 Where granting the injunction would require SNRHA to merely comply with basic notions of
12 procedural due process and continue the Voucher pending the outcome of this case, and
13 denying the injunction would cause Richardson to lose her housing, the balance of hardships
14 tips sharply towards Richardson.

15
16 D. *An injunction against Richardson's termination is in the public interest.*

17 The Ninth Circuit has held that compliance with the law is in the public interest.²¹ In this
18 case, SNRHA clearly violated Richardson's due process rights by failing to provide adequate
19 notice—any notice—of her termination from the Voucher program. Despite knowing
20 Richardson did not receive the termination notice, SNRHA's subsequent refusal to even
21 consider Richardson's appeal further violates Richardson's due process rights to a fair hearing.

22
23 ²⁰ *Perkins-Bey v. Hous. Auth. Of St. Louis County*, 2011 U.S. Dist. LEXIS 25438 (E.D. Mo.
Mar. 14, 2011).

24 ²¹ *Park Village Apts. Tenants Ass'n*, 636 F.3d at 1160 (quoting *N.D. v. Haw. Dep't of Educ.*, 600
F.3d 1104, 1113 (9th Cir. 2010)).

1 An injunction requiring SNRHA to reinstate Richardson's Voucher is therefore in the public
 2 interest because it would mandate that SNRHA continue to comply with basic notions of due
 3 process and maintain the integrity of the Voucher program.

4
 5 E. *The bond requirement should be waived because Richardson is indigent.*

6 The security required by FRCP 65(c) should be waived because Richardson seeks to
 7 enforce important federal rights and has limited economic means. The bond requirement is not
 8 mandatory. The 9th Circuit has stated that courts have the discretion to dispense with the
 9 security requirement, or to request a mere nominal security, where requiring security would
 10 effectively deny access to judicial review.²² In this case, Richardson has such limited income
 11 that the loss of her housing subsidy will render her at risk to eviction and possibly
 12 homelessness. For these reasons, an injunction should issue without any security requirement.

13 14 CONCLUSION

15 Homelessness and loss of basic needs amount to irreparable harm sufficient to obtain a
 16 preliminary injunction. Richardson has a high likelihood of success on the merits because
 17 SNRHA's actions are in clear contradiction of federal law. For these reasons, this Court should
 18 issue an injunction to SNRHA to reinstate Richardson's recently terminated Voucher.

19
 20 Wherefore Plaintiff Rhea Richardson respectfully prays as follows:

21 1. A Preliminary Injunction to reinstate Richardson's Section 8 Housing Choice
 22 Voucher until such time as her Complaint may be heard by the Court;

23 ²² *California ex rel. Van De Kamp v. Tahoe Regional Planning Agency*, 766 F.2d 1319, 1325
 24 (9th Cir. Cal. 1985); *see also Riley v. Nevada Supreme Court*, 763 F. Supp. 446, 462 (D. Nev. 1991).

1 2. That the bond required for the filing of a preliminary injunction be waived or
2 nominal;

3 3. Grants such other and further relief as may be necessary and proper.

4 DATED this 19th day of October 2015.

5
6 Respectfully submitted,
NEVADA LEGAL SERVICES, INC.

7
8 By: 

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LIST OF EXHIBITS

- A. Certified Letter with Enclosed Notice of Termination
- B. U.S. Postal Service Tracking of Certified Letter
- C. Richardson's Request for an Informal Hearing to SNRHA
- D. SNRHA's Denial of Informal Hearing Request